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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,821	01/15/2002	Stewart E. Erickson	25005/101/102	5359
5909 7590 07/16/2007 NAWROCKI, ROONEY & SIVERTSON SUITE 401, BROADWAY PLACE EAST 3433 BROADWAY STREET NORTHEAST MINNEAPOLIS, MN 554133009			EXAMINER BEKERMANN, MICHAEL	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 07/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/047,821	ERICKSON, STEWART E.	
	Examiner	Art Unit	
	Michael Bekerman	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-63 is/are pending in the application.
- 4a) Of the above claim(s) 53-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/22/02, 9/26/02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. This applicant does not appear to properly claim priority to the claimed provisional 60/253,554. This application was filed more than a year after the provisional, and therefore no priority may be claimed. For the purposes of rejection, the effective filing date is 01/15/2002.

Election/Restrictions

2. Applicant's election without traverse of claims 46-52 in the reply filed on 04/23/2007 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claim 46 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claim 46, this claim recites the limitation "In a method of recycling carbon dioxide". This language implies that the steps following the preamble are part of a larger method that is not entirely recited in the claim. This is unclear. If the steps of claim 1 are "in a method", the entire method needs to be recited along with those steps.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. **Claim 46 is rejected under 35 U.S.C. 102(a) as being anticipated by Eco-Products**(http://web.archive.org/web/20011118113424/ecoproducts.com/Kitchen_Division/paper/index_household.htm). By using the Wayback Machine at archive.org, this webpage has been dated back to 11/18/2001). Eco-Products teaches marketing a product created using recycled carbon dioxide.

Regarding claim 46, Eco-Products teaches the sale of recycled toilet paper. Toilet paper is made from plant life, which grows using carbon dioxide. Since animals take in oxygen and create carbon dioxide, while plants take in carbon dioxide and create oxygen, this entire process is cyclical. Thus, the carbon dioxide floating in the air currently and taken in by plants is recycled carbon dioxide. Thus, the plant life used to create the toilet paper of Eco-Products inherently uses recycled carbon dioxide. Thus, the acquiring and providing of carbon dioxide is inherent. The Eco-Products webpage itself is an example of marketing the product created from this process.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 47-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eco-Products (Citation Above).**

Regarding claims 47-51, Eco-Products teaches the products sold by the company as having indicia representing the company. With respect to the specific data content of the indicia or the information the indicia conveys, it could be argued that Eco-Products does not teach such data content. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability, see *In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have displayed any type of data content on the product for sale. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention.

Regarding claim 52, Eco-Products teaches the marketing of recycled toilet paper. With respect to the specific type of product to be marketed (processed food

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products), it could be argued that Eco-Products does not teach the specific type of product (it could be argued that toilet paper may be edible). However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content (marketing the product). Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability, see *In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have created any type of product derived from the plants. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Braster, Marty. "Switchgrass envisioned as cash crop". Omaha World – Herald. October 27, 1999.


"Soft drinks made with recycled CO₂". ABC Science Online. November 29, 2001.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bekerman whose telephone number is (571) 272-3256. The examiner can normally be reached on Monday - Friday, 7:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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JEFFREY D. CARLSON
PRIMARY EXAMINER